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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. 370.

THE BALTIMORE AND OHIO RAILROAD COMPANY,
Petitioner,

vs.

DANIEL T. JACKSON,
Respondent.

BRIEF IN REPLY TO AMICUS CURIAE BRIEF OF INTERSTATE COMMERCE COMMISSION.

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& POUL,
Of Counsel.

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This is a private litigation involving only the railroad and its 72 year old employe. It involves none of the great principles and can trigger none of the dire consequences contended for by the petitioner and now reiterated by the Interstate Commerce Commission.

We have pointed out in our Brief in Opposition that there is not a word of evidence in this record to support a finding that railroad motor cars are usually, customarily, or ever used to pull loaded trucks on any other railroad. It is significant that the Commission itself does not advise this Court that it ever had any knowledge of the fact that petitioner or any other railroad was using motor cars to

pull loaded trucks on its lines. In this litigation, therefore, it is not pertinent to decide whether or not the Commission has been derelict in failing to adopt regulations or to prescribe standards for motor cars or trucks operated independently of each other.

Had it been known to the Commission that the lives and limbs of employes would be placed in danger by the use of combinations of vehicles such as these, it seems quite certain that requirements for adequate braking equipment would have been adopted. The Commission has adopted just such regulations with regards to multiple motor vehicles used on highways: 49 CFR 194.5 (1949); 49 CFR 193.40 et seq. (1956).

An argument, similar to that here made, was presented by the railroad in its petition for rehearing of *O'Donnell v. Elgin, J. & E. R. Co.*, 338 U. S. 384, reh. den. 338 U. S. 945. Its contention, that the Commission's interpretation of the statute was controlling, was rejected by this Court.

The Commission filed a brief in support of the railroad in *Shields v. Atlantic Coast Line R. Co.*, 350 U. S. 318, which involved the interpretation of another section of the Safety Appliance Act. There, as here, no regulation or standard adopted by the Commission was applicable. This Court held, nevertheless, that "it does not follow that appliances necessary and furnished for the safe use of the car, although not standardized under §3, are not within the sweep of §2."

The petition presents no ground for review and should be dismissed.

Respectfully submitted,

MILFORD J. MEYER,
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MEYER, LASCH, HANKIN & POUL,
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